

ESTTA Tracking number: **ESTTA331150**

Filing date: **02/09/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Steven Gagliano		
Entity	Individual	Citizenship	UNITED STATES
Address	54 Main Street Kings Park, NY 11754 UNITED STATES		

Attorney information	John G. Tutunjian Tutunjian & Bitetto, P.C. 20 Crossways Park North Suite 210 Woodbury, NY 11797 UNITED STATES trademarks@tb-iplaw.com, john@tb-iplaw.com Phone:516-496-3868		
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Applicant Information

Application No	77727660	Publication date	01/19/2010
Opposition Filing Date	02/09/2010	Opposition Period Ends	02/18/2010
Applicant	TORMENTED SOULS MOTORCYCLE CLUB INC. 4095 Maywood Drive Seaford, NY 11783 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. First Use: 2008/08/08 First Use In Commerce: 2008/08/08
All goods and services in the class are opposed, namely: Association services, namely, organizing chapters of a fraternity and promoting the interests of the members thereof

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3622903	Application Date	10/15/2008
Registration Date	05/19/2009	Foreign Priority Date	NONE
Word Mark	TORMENTED SOULS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2002/05/01 First Use In Commerce: 2002/05/01 CLOTHING, NAMELY, SHIRTS AND JACKETS Class 044. First use: First Use: 2002/05/01 First Use In Commerce: 2002/05/01 TATTOO SERVICES AND PIERCING SERVICES
Related Proceedings	Opposer has Federal Court action pending against Applicant for injunctive relief against Applicant's use of Trademark
Attachments	77593415#TMSN.jpeg (1 page)(bytes) 536-6_Notice_of_Opposition.pdf (5 pages)(184048 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/j. tutunjian/
Name	John G. Tutunjian
Date	02/09/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Steven Gagliano

Opposer,
v.

Tormented Souls Motorcycle Club, Inc.,
AKA Tormented Souls MC Club

Applicant.

Opposition No.: [TBD]
Application Serial No.: 77/727,660
Mark: **TORMENTED SOULS
MOTORCYCLE CLUB**

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Notice of Opposition

Steven Gagliano. (“Opposer”), an individual, and doing business at 54 Main Street, Kings Park, NY, believes that he will be damaged by, and hereby opposes, the grant of the application of Tormented Souls Motorcycle Club, Inc. (“Applicant”) to register the mark “TORMENTED SOULS MOTORCYCLE CLUB” shown in the application Serial Number 77/727,660 filed May 2, 2009 for “Association services, namely, organizing chapters of a fraternity and promoting the interests of the members thereof” in International Class 035. Pursuant to 15 U.S.C. Section 1052, by and through its attorneys, Opposer hereby opposes the same.

As grounds therefore, it is alleged that:

COUNT ONE

1. Opposer is the owner of the federal trademark registration: No. 3,622,903 registered on the Principal Register on May 19, 2009, for the trademark TORMENTED SOULS for “Tattoo services and piercing services” in International Class 044 and for “Clothing, namely shirts and jackets” in International Class 025.

2. Since at least May 1, 2002, Opposer has and continues to prominently use its TORMENTED SOULS trademark in connection with the tattoo services and piercing services, and with the clothing goods, namely shirts and jackets.

3. As a result of the widespread use in interstate commerce by the Opposer of the aforesaid TORMENTED SOULS trademark in connection with tattoo services and piercing services as well as clothing, namely shirts and jackets, the mark has acquired extensive goodwill, has developed a high degree of distinctiveness, is an asset of Opposer, and is well known and recognized as identifying tattoo and piercing services and clothing goods, namely shirts and jackets, which have their origin with, are provided by and/or have been authorized by the Opposer.

4. Applicant’s mark TORMENTED SOULS MOTORCYCLE CLUB is confusingly similar to Opposer’s TORMENTED SOULS trademark in sound, appearance and commercial impression. In particular, both these marks use the identical term “TORMENTED SOULS.” Applicant has disclaimed the term “MOTORCYCLE CLUB” in its application Serial No. 77/727,660.

5. Upon information and belief, Applicant is using the mark TORMENTED SOULS MOTORCYCLE CLUB with respect to a motorcycle club and/or a motorcycle organization.

6. Applicant's services are related to the goods and services sold and provided in connection with Opposer's TORMENTED SOULS trademark and/or represent a natural zone of expansion for Opposer and such goods and services would travel and/or be encountered by, associated with and promoted through the same channels of trade for sale to, and use by, the same class of users/purchasers.

7. In particular, there is a well-known and long established association of the motorcycle culture and motorcycle clubs with at least tattoos and the acquiring and wearing of tattoos, and as such, use of Applicant's mark with respect to its "Association services" namely, its motorcycle club/organization services, is likely to cause confusion and mistaken affiliation with Opposer's mark. Namely, it is well established that "tattoo services" are used by users/members of "Association services" such as motorcycle clubs. Further, users/purchasers would believe that the Applicant's "Association services" namely, its motorcycle club/organization services, are within the Opposer's logical zone of expansion. As such, use of Applicant's mark will result in the false impression that Opposer has sponsored or has otherwise authorized the Applicant's motorcycle club or motorcycle association to operate with Opposer's registered Trademark, thus damaging the long term established goodwill associated with the Opposer's mark.

8. Because of the near identical nature and appearance of the marks and the strong association between tattoos and motorcycle culture, Applicant's use of the mark TORMENTED SOULS MOTORCYCLE CLUB in connection with its "Association services, namely organizing chapters of a fraternity and promoting the interests of the members thereof" is likely to cause confusion, mistake or deception as to the source of origin of Applicant's services in that the public, the trade and others are likely to believe that Applicant's services are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods/services or licensed products.

9. Registration of the mark shown in the Application Serial No. 77/727,660 will result in damage to Opposer under the provisions of Section 2(d) of United States Trademark Act, 15 U.S.C. 1052(d), pursuant to the allegations stated above.

COUNT TWO

10. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 9 as though set forth herein.

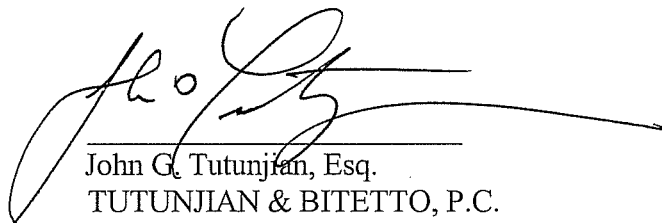
11. Opposer's TORMENTED SOULS trademark is distinctive and famous and had become famous long prior to the acquisition of any rights Applicant may claim in the mark TORMENTED SOULS MOTORCYCLE CLUB.

12. Use of the mark TORMENTED SOULS MOTORCYCLE CLUB by Applicant causes dilution of the distinctive quality of Opposer's famous TORMENTED SOULS trademark.

13. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its mark and thereby dilute Opposer's rights in its distinctive and famous TORMENTED SOULS trademark.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial Number 77/727,660 be refused registration.

Respectfully submitted,

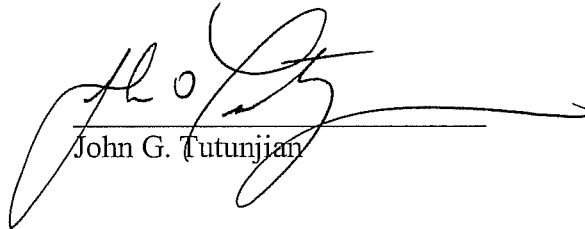
A handwritten signature in black ink, appearing to read 'John G. Tutunjian', is written over a horizontal line.

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ATTORNEY(S) FOR OPPOSER

CERTIFICATE OF FILING

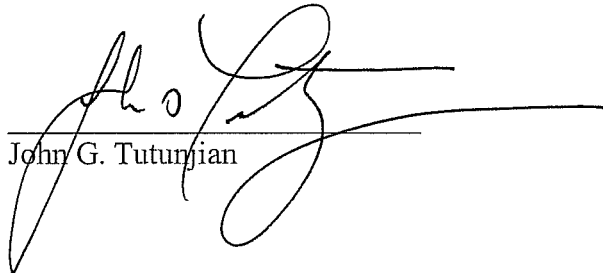
I hereby declare that the attached Notice of Opposition has been filed via the Electronic system for Trademark Trials and Appeals (ESTTA) this **9th day of February, 2010**.



John G. Tutunjian

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Tormented Souls Motorcycle club and its representative, Law Office of Christopher Day, by mailing said copy on **February 9th, 2010**, via Certified Mail, Return Receipt Requested to: Tormented Souls Motorcycle Club, Inc., 4095 Maywood Drive, Seaford, NY 11783 and The Law Office of Christopher Day, 301 E. Bethany Home Road, Suite A-213 Phoenix, AZ 85012.



John G. Tutunjian